THOUGHTS

ON THE

LAW OF DIVORCE

IN ENGLAND.

"The present system was a wrong one—it proceeded entirely upon the principle of granting a private favour by an Act of Parliament, and the man who could devise a good remedy for the inconveniences would confer a great benefit on his country."—*Lord Grenville—Parl. Deb.* vol. iv. p. 331.

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TO

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These Pages

ARE MOST AFFECTIONATELY AND RESPECTFULLY

INSCRIBED

BY

HIS SON.

THE

LAW OF DIVORCE.

Of all questions affecting the moral interests of society, that which concerns the dissolution of the marriage bond is perhaps the gravest—and therefore the law which governs it should of all laws be the most reverently approached—the most carefully exempted from rude experiment or hasty touch. If it has been for centuries intertwined with the habits of a people, it must have largely contributed to the moulding of the national character; and if change in it be necessary, the proposal for its alteration can scarcely be submitted to a scrutiny too severe, too jealous, or too patient. There may be an acknowledged evil in the existing law, and yet a remedy applied with exclusive reference to this defect may create a greater mischief than it heals—as a physician, who administers relief to a particular malady of his patient, in ignorance or neglect of his general constitution, may cure his disorder but undermine his health. It is idle to declaim on this subject. All wise men who have spoken or written upon it, whatever might be their different views as to the remedy, have agreed as to the necessity of its being applied with the tenderest regard to existing feelings

and prejudices, and after the maturest deliberation.

To such a deliberation the ordinary diligence and capacity of one whose profession has necessarily led him to the frequent consideration of this subject, may contribute some materials. To possess a clear statement as to what the law was —what it is—what attempts have been made to alter it, how they were supported, and why they failed—cannot be useless to those Members of Parliament who are called upon to legislate on a matter which they have hitherto had no particular inducement to investigate. I propose to myself little more than to make such a statement; at all events, if the premises are fairly stated, my own conclusion will carry with it no weight, unless it appear to be a legitimate deduction from them.

I must observe in the outset, that if the expediency of permitting a divorce were to be estimated irrespectively of its religious aspect, and solely upon the ground of civil wisdom, the arguments of the most accurate* reasoners and most careful observers of mankind would perhaps be found to preponderate against its permission. They have thought the rendering the union of

* Hume's Essays, xix. on Polygamy and Divorce; Burke's Letters on a Regicide Peace, first letter; Paley's Moral Philosophy, vol. i. 320, on Divorce; and Lord Stowell in *Evans* v. *Evans*, Consistory Reports, vol. i. p. 36. Mackintosh thought it the most difficult of state problems, Hist. of Eng. vol. ii. p. 274.

married persons determinable only by death so clear in its *general* tendency to preserve the harmony and happiness of private life, as greatly to counterbalance cases of *individual* hardship. They built this opinion upon a deep consideration of human nature, upon the necessity which such indissolubility induces of mutual compliances and forbearances,* — upon the extreme danger of uniting two persons so closely in all their interests and concerns, without rendering that union total and entire,—and above all upon the terrible consequences to which children were exposed by the divorces of their parents.

The voice of experience and History confirms their reasoning. A general corruption of manners accompanied the relaxation of the laws of divorce in ancient Rome. As divorces became frequent, marriages became rare—and Augustus endeavoured by penal laws to compel persons to enter into the married state.† The same observation

* Mr. Williams Wynn, in his speech on Dr. Phillimore's motion for an alteration of the law of divorce, told this anecdote:—

"He asked Lord Stowell whether it were true, as he had been "informed by others, that in nine out of ten of these cases, the "party who complained was the party most to be blamed; that "in that large proportion of cases the husband was the party "chiefly in fault, then the wife, and last of all the seducer. Lord "Stowell's reply was, 'You are wrong; that is not the case in "'nine instances out of ten, but in ninety-nine out of a hun-"'dred.'"—Parl. Deb. vol. xxiv., p. 184. See too Lord Stowell's remarks in *Evans* v. *Evans*, already cited.

† "Wonderful was the harmony," says the historian, speaking of the former state of the law, "which this inseparable "union of interests produced between married persons; while

applies to the worst period of the French Revolution, when the divorces *à vinculo*, during three months at Paris, exceeded those decreed *à mensâ et thoro*, in Doctor's Commons, during an hundred years. And I have not heard anybody assert that the latitude of divorce now allowed in France,* in part of Germany, and in certain states of North America, has contributed to the promotion of general morality. In the rural districts of Scotland there is said to be great purity of private life, but it may well be doubted whether this is not in spite rather than in consequence, of the facility of obtaining divorce.†

" each of them considered the inevitable necessity by which " they were linked together, and abandoned all prospect of any " other choice or establishment."—Dionysius Halicarn. lib. 2, as cited by Hume, ibid.

* The Bourbons restored the Canon Law. But since the last Revolution the law is as follows:—

" Des Causes du Divorce.

" 229. Le mari pourra demander le divorce pour cause d'adul- " tère de sa femme.

" 230. La femme pourra demander le divorce pour cause " d'adultère de son mari, lorsqu'il aura tenu sa concubine dans " la maison commune. (A very strange limitation.)

" 231. Les époux pourront réciproquement demander le " divorce pour excès, sévices ou injures graves, de l'un d'eux " envers l'autre.

" 232. La condamnation de l'un des époux à une peine infa- " mante sera pour l'autre époux une cause de divorce.

" 233. Le consentement mutuel et persévérant des époux, " exprimé de la manière prescrite par la loi, sous les conditions " et après les épreuves qu'elle détermine, prouvera suffisamment " que la vie commune leur est insupportable, et qu'il existe, par " rapport à eux, une cause péremptoire de divorce." Code Civil, tit. 6. c. 1.

† The Council of Trent promulgated the doctrines of the illegality of the divorce *à vinculo*, and the legality of that *à mensâ*

With the dictates of philosophy and experience, the law of the Church has accorded. "Other legislators," (said Mr. Burke,* speaking of the French Revolutionists,) "knowing that marriage "is the origin of all relations, and consequently "the first element of all duties, have endeavoured "by every art to make it sacred. The Christian "religion, by confining it to pairs, and by render- "ing that relation indissoluble, has by these two "things done more towards the peace, happiness, "settlement, and civilization of the world, than "by any other part of the whole scheme of Divine "Wisdom." The Church† in both her Eastern and Western divisions forbad divorce *à vinculo*. It was said by Bishop Cozens, in his debate on Lord De Roos's bill, that the Greek Church "at this day" permitted such divorce; but I think it will be found that his assertion is erroneous and that the opinion of only a very few Fathers permitted the innocent party to marry again.‡

Lyndewode, in his Commentary on the Provincial Constitutions made for the Government of the Church in England, seems to admit reluctantly

et thoro, under an anathema. Sess. xxiv.--De Sacramento Matrimonii, Can. vii. & viii.

* First Letter on a Regicide Peace.

† I am aware that some early Councils seem to countenance the divorce *à vinculo*, but it is expressly forbidden by the canon law of both Churches.

‡ See a careful summary, enriched with learned notes, in Walter's Kirchenrecht, section 329, as to the Roman—1, 331, as to the Greek Church—and the whole subject discussed at greater length in Eichhorn's Kirchenrecht, chap. 6, vol. 2.

the lawfulness of divorce from the marriage bond *in one case only*—where *both* parties took Religious Vows—perhaps because both parties were then considered as *civilly* dead.*

The Church allowed no divorce *à vinculo*, though it pronounced certain marriages by declaratory sentences void *ab initio*, that is, never to have been marriages, because the parties laboured under certain original incapacities to enter into such contract. There were in fact no divorces, though frequently (and for that reason I mention it) confounded with divorces *à vinculo*. The Church, however, sanctioned a separation from bed and board, in cases of adultery and cruelty. And it compelled the party deserting his marriage vows to return to their fulfilment by cohabitation.

After the Reformation, marriage ceased to be considered a sacrament,† but was held to partake of the nature both of a religious and a civil contract. Although, as Sir W. Scott said in the House of Commons,‡ "It is impossible to deny, "some of the Reformers run into wild ideas on "the subject of divorce, which were inconsistent "with the solemnity of the marriage contract." One of the consequences of these opinions was

* See Lyndewode's Gloss. on the word "Nullatenus separentur," in the chapter "de Clericis Conjugatis," lib. iii. tit. 3, Provinc. Constit. L. 129 of Oxford ed. (1679).

† The reason why it was considered a sacrament will be found very clearly stated in Lyndewode's Provin. lib. iv. tit. 1, "de Sponsalibus et Matrimoniis," Gloss. on the word "Sacramenta."

‡ Parl. Hist. v. 35, p. 304.

this:—Parr Marquis of Northampton obtained a divorce in the Ecclesiastical Court from Anne Boucher his wife, by reason of her adultery. A Commission* was appointed to inquire whether such divorce did not enable him to marry again. Before the answer came he had married Elizabeth Brooke, daughter of Lord Cobham. The answer made by the English canonists, was, "that the "bond of wedlock being broken by the mere fact "of infidelity, the second marriage was lawful." Nevertheless the Marquis found it necessary to obtain an Act of Parliament confirming his second marriage. But this act was repealed by a statute passed in the following reign.†

The question, having been thus raised, was shortly afterwards again discussed. In 1549 an Act of Parliament‡ was passed, which provided, "that the king shall have full power to nominate "sixteen ecclesiastics, of whom four to be bishops, "and sixteen laymen, of whom four to be law-"yers, to order and compile such laws ecclesias-"tical as shall be thought convenient." Archbishop Cranmer (described by Sir W. Scott as more moderate in his views) composed a work for this purpose, which, being afterwards translated by two civilians, Sir John Cheke and Dr. Haddon, into Latin, was called the Refor-

* Over which Cranmer presided.

† The Act, confirming the marriage, is a private Act, 5 & 6 Edw. VI., and not printed in the common collection of statutes —Mackintosh's Hist. of Eng. vol. ii. p. 276; Burnet, Hist. of his Own Times, book v. (1694).

‡ 3 & 4 Edw. VI. c. 13.

matio Legum. This code contained a chapter, divided into twenty sections, " De Adulteriis " et Divortiis."—It allowed the marriage bond to be dissolved by the Ecclesiastical Judges for,—(1) adultery, (2) desertion, (3) long absence, (4) mortal enmities shown in overt acts threatening life (*inimicitiæ capitales*), (5) lasting cruelty of a husband towards his wife (*malæ tractationis crimen*).* In all these cases, the innocent party, wife or husband (*integra persona —alter conjux*), was permitted to marry again. This code (which also contained very severe penalties against adulterers, and took away the divorce *à mensâ et thoro*) never received the Royal confirmation. The law therefore, in fact, continued on its old footing—nevertheless, the opinion of the Church, during the early part of the reign of Queen Elizabeth, seems to have been that a party divorced *à mensâ et thoro* might marry again, until towards the close of her reign when the question underwent a solemn adjudication in *Foljambe's case*. This case is thus reported by Moore, (p. 683):† " Rye *v.* Foljambe, February 13th, anno 44 Eliza- " beth. In Camera Stellata fut declare per tout " le Court, que lon Foljambe fut divorce de sa

* What is termed " sévices" in the French code.

† The case is also reported in Salkeld, note 3, 138. Both Reports assign the same date to the case,—namely, the 44th Elizabeth (1601). Bancroft did not become Archbishop of Canterbury till 1604, and therefore the decision appears to be more correctly attributed to Archbishop Whitgift.—Macqueen's Practice of the House of Lords, &c. p. 470, note.

" primer femme pur l'incontinency, et apres eut " marie Sarah Poge le fils de Rye, vivant son " primer femme, ques cest fut une void marriage ; " quia le primer divorce nest que *a mensâ et thoro* " et nemy *a vinculo matrimonii.* Et John Whit- " gift a donq Arch. de Cantr. dit quil a appel a " lui a Lambeth les plus sage Divins te Civiliens " et ces tout avoent ceo agree." Their opinion is said to have been chiefly built on the text, " What, therefore, God hath joined together let not man " put asunder." Next followed the Canons of 1603 ; the 107th of which provided, " that, in all " sentences pronounced only for Divorce and Sepa- " ration *à thoro et mensa*, there shall be a caution " and restraint inserted in the act of the said sen- " tence, That the parties so separated shall live " chastely and continently, neither shall they, " during each others life, contract matrimony with " other person. And for the better observation of " this last clause, the said sentence of Divorce " shall not be pronounced, until the party or " parties requiring the same have given good and " sufficient caution and security into the Court, " that they will not any way break or transgress " the said restraint or prohibition." Nor should the impressive language of our beautiful Liturgy* be forgotten, in which both parties bind themselves, forsaking all others to keep themselves only to each other "*so long as they both shall live.*" This was therefore the law of the land

* Service for the Solemnization of Matrimony.

by the Statute of Uniformity,* as well as the voice of our Church in 1661. And in this state the law seems to have remained till the year 1668, when the interference of the Legislature was invoked by Lord Roos (afterwards successively Earl and Duke of Rutland). Bishop Burnet makes the following observations on this case: "This matter had lain asleep above 160 "years, (the allowing of a second marriage after a "divorce for adultery,) till the present Duke of "Rutland, then Lord Roos, moved for a like "liberty. At that time a sceptical and libertine "spirit prevailed, so that some began to treat "marriage only as a civil contract, in which the "Parliament was at full liberty to make what "laws they pleased; and part of King Charles's "courtiers applauded them, hoping by this doc-"trine that the King might be divorced from the "Queen;"† Charles the Second certainly took a deep interest in the progress of the Bill, and constantly attended the debates. In fact it became the watchword of a party; and this judicial proceeding was made a mere vehicle for the expression of political feeling. Nevertheless it was with the greatest difficulty, and not till after three or four sessions, that this Divorce Bill was carried through Parliament, and in the House of Lords all the Bishops but two‡ voted against it—

* 13 & 14 Car. II. c. 4.

† Burnet's Hist. of his Own Times, book v. (1694); see also book ii. (1663).

‡ Cozens, Bishop of Durham, and Wilkins, Bishop of Chester.

"So strong was the opinion (observes Sir W. Scott) "that human legislatures had nothing to do in "such matters."* Bishop Cozens was the chief supporter of the bill, and the substance of his various speeches was printed in 1700,† by the friends of the Duke of Norfolk. The next instance of an application to the legislature was when that nobleman also resorted to Parliament for a similar purpose. And this again, from first to last, was a party proceeding; the Duchess being a Roman Catholic and Jacobite, the Duke a Protestant and a friend to the Revolution At that time, 150 years after the Reformation, it was stated, and not contradicted, by the counsel for the Duchess, at the bar of the House of Commons, that there were not more than three or four instances of a parliamentary divorce. The Duke had attempted, in 1692, to obtain a divorce without having had recourse to any inferior court, but the bill was thrown out. The consequence was that, fearing to bring his case before the competent ecclesiastical tribunal, he had recourse to a verdict at common law, and thus his case was distinguished by the discreditable exception of being the first in which a divorce *à mensâ et thoro* had not been previously obtained, and of being the earliest precedent for the introduction of a verdict as a necessary preliminary to parliamentary divorce. When

* Parl. Hist. vol. xxxv. p. 805.

† State Trials, vol. xiii. p. 1334. This prelate seems to have thought malicious desertion a good ground of divorce.

the Lords asked the Lord Chief Justice of the King's Bench, "whether the Duchess of Norfolk "had been concerned in the action as a party," he made the answer, (the reasoning of which was afterwards adopted by Lord Stowell,) "*her Grace* "*was neither plaintiff nor defendant; the action* "*having been between the Duke and Sir John* "*Germayne.*"*

It appears that as late as 1715 the old opinion of the indissolubility of the marriage bond still kept its hold on the public mind; but after the accession of the House of Hanover, parliamentary divorces became almost the rule, instead of the exception. In 1771, their frequency and the facility with which they were obtained seems to have excited general scandal; and in that year the Duke of Athol proposed a bill to prevent the intermarriage of the offending parties. It passed the House of Lords without opposition, and was rejected by a small majority in the House of Commons. In 1779 a similar measure, proposed by Dr. Watson, Bishop of Landaff,† met with a similar fate. In 1798 the Lords made a standing order, "that before the second reading of the bill the "party praying for the divorce should attend at "the bar of the House to be examined, if their "Lordships should think fit, in order to ascertain "if there were any collusion, direct or indirect;

* State Trials, vol. xiii. p. 1334.

† Rejected by 11—ayes 40, noes 51; Parl. Hist. vol. xx. p. 599.

" or if the act of adultery were known to the hus-
" band; or if there were any collusion between
" the wife and him to procure a sentence of di-
" vorce before an Ecclesiastical Court or a verdict
" at common law; and that the parties might be
" examined as to how they were living at the
" time of the act of adultery, if they were pre-
" viously separated, or if the husband performed
" all his conjugal duty, affording his wife his
" confidence and protection." On the second of April, in 1800, Lord Auckland brought in a bill " for the more effectual prevention of the crime " of adultery." It contained two provisions—the one making it unlawful for the offending parties to intermarry—the other to require that every bill of divorce contain a clause prohibiting such intermarriage. And on the sixth of April Lord Auckland brought in a new bill, which in fact was the old bill with new clauses, rendering persons guilty of adultery liable to be punished by fine and imprisonment, as in cases of misdemeanor. The measure passed the House of Lords with the cordial support of Lord Chancellor Eldon, the approbation of Lord Chief Justice Kenyon, of Lord Grenville, and of the bench of Bishops, among whom was the learned and eloquent Horsley;—it was thrown out in the House of Commons, though supported by the Master of the Rolls (Sir Pepper Arden) and Mr. Erskine, and also, though more dubiously, by Sir W. Scott.

In 1809 the late Lord Auckland renewed his meritorious efforts to meliorate the Parliamentary Law of Divorce.* After a melancholy and graceful allusion to the failure of his former more comprehensive measure, he made the following motion: "Ordered, that no bill, grounded on a petition to "this House to dissolve a marriage for the cause "of adultery, and to enable the petitioner to "marry again, shall be received by this House, "unless a provision be inserted in such a bill, "that it shall not be lawful for the person whose "marriage with the petitioner shall be dissolved "to intermarry with any offending party on "account of whose adultery with such person it "shall be therein enacted that such marriage "shall be so dissolved: Provided, that, if, at the "time of exhibiting the said bill, such offending "party or parties shall be dead, such provi-"sion as aforesaid shall not be inserted in the "said bill." This measure, strongly supported by the Archbishop of Canterbury, Lord Grenville, Lord Chancellor Eldon, and Lord Erskine, was carried, on a division, by 28 against 12.† It was murmured at by a minority of the House of Commons. But it remains a Standing Order unaltered, and, most incredibly strange, practically abrogated by its suspension whenever a a divorce bill is passed. This measure, which

* Parl. Deb. vol. xiv. p. 326.

† Parl. Deb. vol. xiv. p. 612.

almost every distinguished judge, prelate, and statesman in the House of Peers, pronounced a remedy called aloud for by the state of society, and to be only too feeble in its provisions, remains a marvel to posterity, a blot upon our parliamentary history, a melancholy but instructive monument of the evil inseparable from the confusion of legislative and judicial functions. Following the history of legislative inquiry into the subject of Divorce, I should observe, that in 1820,* when Queen Caroline was proceeded against in the House of Lords, the Bishops† seem to have been agreed as to the abstract lawfulness of a divorce for adultery. The question again underwent considerable discussion in 1830, on the matter of Lord Ellenborough's Divorce Bill. The defects of the existing system were as usually freely commented upon and freely admitted.—Not long afterwards, (in the month of June in the same year,‡) Dr. Phillimore brought forward his motion, "That "an humble address should be presented to his "Majesty, praying his Majesty would be pleased "to direct the Commissioners appointed to in-"quire into the state of the Ecclesiastical Courts "in England and Wales, to take into their con-"sideration the state of the law of divorce, to

* Parl. Deb. N. S. vol. iii.

† Except perhaps the Archbishop of Tuam.

‡ Parl. Hist. N. S. vol. xxiv. p. 1260; and Mirror of Parliament for June, 1830.

" consider the expediency of enabling persons to " obtain divorce from the bonds of matrimony in " cases of adultery by legal process in courts of " competent jurisdiction." The tone and character of this debate merit particular attention; the evils of the parliamentary divorce were most forcibly urged, and the proposition, that Divorce Bills were either not attended to at all by the House, or considered solely with respect to the interests of a party or a friend, was unanswerably established. " There was always" (said the learned mover) " even yet a canvassing for opinions " and a soliciting of support, for such bills, as " would be disgraceful even in a Turnpike Act, " but was most discreditable to the House when " it was acting as a solemn court of judicature." He dwelt also on the prodigious increase of Divorce Bills. The following statement needs no commentary.

From the Reformation to George the First's reign—Five.

From that time to 1776—Sixty.

From that time to 1800—Seventy.

From 1800 to 1830—between Eighty and Ninety.

To which may be added,

From 1830 to 1844—Fifty-three.

In the year 1843 Dr. Elphinstone brought in a bill for submitting of Divorces *à vinculo* to the adjudication of the Judge of the Consistory of

London, which was rejected by the House of Commons. The learned member has renewed the attempt this session. Lastly, the subject during the present session has fallen into the powerful grasp of Lord Brougham, and is now under the consideration of the House of Lords.

Such is a brief but faithful abstract of the history of legislative divorce, and of the abortive attempts to remedy a system which, being radically and incurably wrong, has hitherto successfully resisted all such attempts. One maxim these failures at least have established, that it is not for the legislature, when it usurps the ermine of the judge, to boast of the success of its experiments; it cannot take for its motto—

> " Nullis polluitur casta domus stupris,
> Mos et lex maculosum edomuit nefas."

To be sure no anomaly in jurisprudence was ever permitted to remain so long untouched in a civilized state. If it be wise and right to permit divorces *à vinculo* to take place at all, what subject can be conceived requiring more caution, nicer examination of evidence, stricter adherence to principles of law, than this? A subject of which the consequences are so tremendous to individuals and to society,—separating those who have called God to witness their indissoluble union, --dividing interests which have been perhaps for many years closely interwoven, and which the general law of the land, copying a higher law,

pronounces, even where public justice may suffer by the maxim, to be intimately one; and this too in cases where children, born before the dissolution of the bond, may have a father living with a wife, and a mother with a husband, whose existence must confound their notions of morality from the earliest moment they become capable of entertaining them—what can appear fraught with greater danger to the best interests of society? Yet this is the subject on which too often the House of Commons has passed its sentence, either without any consideration of the evidence at all, or with such consideration, as, being canvassed by one of the parties in the cause, may suggest to the senator who exercises judicial functions for the nonce. Well might Sir James Mackintosh, whose life had been spent in considering the philosophy of law and legislation,* denounce this practice of dissolving marriages by act of parliament, as "a rude and most inconvenient expe- "dient, which subjects proceedings which ought "to be judicial, to the temper of numerous and "open assemblies, while by its expense it ex- "cludes the vast majority of men from the relief "which by long usage it may be considered as "permanently holding out to suitors who are not "themselves uncommonly faulty." Well might that wise, thoughtful and eloquent statesman, Lord Grenville, whose mind on this as on other matters of state policy, anticipated the judgment

* Hist. of England, vol. ii. p. 274.

of posterity, proclaim in his place in the House of Lords, that he had never "been present at or "when a Divorce Bill was passed, that he did "not think the House disgraced and degraded;"* and on another occasion, that "the present system "was a wrong one; it proceeded entirely upon "the principle of granting a private favour by "act of parliament, and the man who could "devise a good remedy for the inconveniences, "would confer a great benefit on his country."†

An attentive reader of these debates will see that four propositions have been at different times propounded by the highest authorities, for the repression of the crime of adultery, and the proper administration of the law of divorce.

1. That the adulterer should be subject to criminal punishment.—Into this difficult question I will not enter further than to observe, such a regulation would be, I believe, in conformity with that which is to be found in most civilized codes.

2. To prohibit the intermarriage of the guilty parties.—A regulation of which, the wisdom and propriety seems to me irrefragably established by the arguments in these debates, and which is among the provisions of Lord Brougham's bill.

3. That the divorce should be granted, if at all, to both parties.—Lord Stowell, Lord Erskine,

* Parl. Hist. vol. xxxv. p. 275.

† Parl. Deb. vol. vi. p. 331.

Lord Kenyon, Dr. Lushington, are among the many who, as it seems to me, in accordance with common sense and common justice, maintain this proposition.

4. That the tribunal must be changed.—All competent judges seem agreed as to this one point at least, that there must be the substitution of a judicial for that monster in jurisprudence, a legislative tribunal. The next inquiry seems to be, what is to be that tribunal? But perhaps an earlier question lies in the way, and must be first answered. Is the divorce *à vinculo* to swallow up all the lesser kind of relief which for centuries the Church has accorded to those who have been aggrieved by the infidelity of their partner to the marriage vow,—or are both, as now, practically to co-exist?

I feel sure that if the feelings of English Churchmen are to be consulted in this matter, that whatever they may say as to the lawfulness and expediency of the former divorce, they will all wish to preserve the latter. I cannot but think that all statesmen who duly consider the reasons on which the law of divorce *à mensâ et thoro* is founded, will be of the same opinion. My reasons for thinking so are these:—In the first place it must be evident, not only to all who have professional experience, whether as judge or advocate, with such cases, but to every one who reflects upon the matter, that there is much truth in Lord

Stowell's observation, " there might be shades of difference as to the conduct"* which would entitle a person to the lesser, but not to the greater kind of relief. For example, there may be a degree of carelessness or supineness not amounting to a criminal connivance, active or passive, with the guilt of the offending party, for which it would be unjust to deny the injured party relief from the necessity of cohabiting with the criminal, but which ought to operate as a bar to his shaking off the yoke altogether, and casting the guilty party upon the world. And if this reasoning be sound, the divorce *à mensâ et thoro* must be left.

In the next place, though divorce *à vinculo* by reason of cruelty, formed, as has been shown, one of the provisions of the Reformatio Legum, and though perhaps as good an argument might be urged in its favour as for divorce by reason of adultery, it is not now proposed to grant this relief for such an offence. But surely it can never be intended to take away the protection of life and limb which the law now affords to the married state, and which compels the offender to support, by competent alimony, the victim whom it withdraws from his brutality; and, if not, some forum must be left to administer such relief. Nor, I presume, is it intended to take away the remedy which the Ecclesiastical Courts now afford against the ma-

* Parl. Deb. vol. xxxv. p. 305. That learned and eminent person grounded on this remark his apology for legislative divorce.

licious desertion of either party to the marriage contract, called the suit for restitution of conjugal rights.

Lastly, what possible reason can be alleged, why a person conscientiously averse to break asunder the bond which he had sworn, under circumstances of peculiar solemnity, that death alone should loosen — why such a person should be deprived of a relief he conceives to be consistent with that vow—why such a person should be compelled to cohabit with one polluted and infamous, to support spurious children, and contaminate his own? Why should he not be allowed the relief which a divorce *à mensâ et thoro* affords; a relief not lightly or carelessly granted, as some imagine and proclaim, but, as every one acquainted with judgments of the Ecclesiastical Courts knows, not pronounced for, until after the maturest deliberation, the most searching investigation, and the most comprehensive and careful consideration of the dreadful mischiefs accruing to society from dissolving these obligations to the marriage vow. I may be excused from making an extract from one of these judgments.

"The law has said that married persons shall "not be legally separated upon the mere disin- "clination of one or both to cohabit together. "The disinclination must be founded upon rea- "sons, which the law approves, and it is my duty

" to see whether those reasons exist in the pre-
" sent case.

" To vindicate the policy of the law is no ne-
" cessary part of the office of a judge; but if it
" were, it would not be difficult to show that the
" law in this respect has acted with its usual
" wisdom and humanity, with that true wisdom,
" and that real humanity, that regards the general
" interests of mankind. For though, in particular
" cases, the repugnance of the law to dissolve the
" obligations of matrimonial cohabitation may
" operate with great severity upon individuals;
" yet it must be carefully remembered, that the
" general happiness of the married life is secured
" by its indissolubility. When people understand
" that they *must* live together, except for a very
" few reasons known to the law, they learn to
" soften by mutual accommodation that yoke which
" they know they cannot shake off; they become
" good husbands, and good wives, from the ne-
" cessity of remaining husbands and wives; for
" necessity is a powerful master in teaching the
" duties which it imposes. If it were once under-
" stood, that upon mutual disgust married per-
" sons might be legally separated, many couples,
" who now pass through the world with mutual
" comfort, with attention to their common off-
" spring and to the moral order of civil society,
" might have been at this moment living in a state

" of mutual unkindness—in a state of estrange-
" ment from their common offspring—and in a
" state of the most licentious and unreserved im-
" morality. In this case, as in many others, the
" happiness of some individuals must be sacrificed
" to the greater and more general good."

" Marriage is the most solemn engagement
" which one human being can contract with
" another. It is a contract formed with a view,
" not only to the benefit of the parties themselves,
" but to the benefit of third parties; to the benefit
" of their common offspring, and to the moral
" order of civil society. To this contract is super-
" added the sanctity of a religious vow. Mr.
" *Evans* must be told, that the obligations of this
" contract are not to be relaxed at the pleasure
" of one party. I may go farther; they are not
" to be lightly relaxed even at the pleasure of
" both. For, if two persons have pledged them-
" selves, at the altar of God, to spend their lives
" together for purposes that reach much beyond
" themselves; it is a doctrine to which the mo-
" rality of the law gives no countenance, that they
" may, by private contract, dissolve the bands of
" this solemn tie, and throw themselves upon
" society, in the undefined and dangerous charac-
" ters of a wife without a husband, and a husband
" without a wife." *

* Lord Stowell in *Evans* v. *Evans*, 1 Consist. Rep. pp. 36, 37, 118, 119.

To be sure if ever the wisdom of a law was vindicated in a manner to satisfy the deepest reasoner, and, at the same time, to inform the humblest inquirer, it is so in the passage just cited. Never was a proposition more clearly established than this—that voluntary separations are *contra bonos mores,* and therefore illegal. This consideration brings me to one of the most scandalous anomalies of the existing law. It will be remembered, that, according to the morality of the old common law, which assigns to the Ecclesiastical Courts exclusive jurisdiction over the subject of marriage, adultery caused a forfeiture of dower. Quite of late years, in defiance of the common law and its most sacred principles, a doctrine has crept into the Courts of Law and Equity, and is now so established as to be overturned only by a decree of the House of Lords or an Act of Parliament, which recognizes, to a certain degree, the validity of articles of voluntary separation, that is to say, where, with or without cause, husband and wife have agreed to live apart, and the former has covenanted, by a deed vested in trustees, to pay a yearly sum for the maintenance of the latter, she is considered to have assumed the character, to use legal language, of a *feme sole.*

The perplexities, inconsistencies, and contradictions which this strange departure from the Common Law has caused in the administration of

justice are the least part of the evil, but they are many. A married woman, who is disabled by the policy of the Common Law from entering into a contract which binds her own person — who cannot be guilty of felony in the presence of her husband — who cannot sue or be impleaded without him — who cannot be a witness for or against him — may, nevertheless, by this modern doctrine, through the intervention of trustees, recover arrears of an annuity the condition of which is that she shall live apart from her husband as a *feme covert;* or may enter into a contract, which was not permitted to her as a *feme sole*, for such an arrangement could not have formed a part of her marriage settlement. The Courts have held that such deeds must be made in contemplation of *immediate* separation; and that, if made with a view to a future event which may occur, they cannot be sustained; although, as Mr. Justice Le Blanc* has unanswerably demonstrated, the same arguments of illegality and bad policy apply equally to each case. These inconsistencies and perplexities are fully set forth by Lord Eldon in the case of Lord St. John against Lady St. John,† one of the cases where he lamented and reprobated this change in the law, " establishing (he said) a course of deci- " sion that can be demonstrated to stand upon no " principle consistent with the law of the land."

* *Rodney* v. *Chambers*, 2 East's Reports, 297.

† *St. John* v. *St. John*, 11 Vesey, p. 529.

That learned person added, "a deed of separation "executed, the wife becomes, to all intents "and purposes, a *feme sole*. How does she get "into that situation? She cannot execute any "deed. She has not the power of contracting." And again, "Independent of the effect of the "contract of marriage itself, the rule upon the "policy of the law is, that the contract shall be "indissoluble, even by the sentence of the law: "to a certain extent the legislature thinking it "for the interest of the community that it should "not be dissolved except by the legislature: upon "the principle probably, that people should un- "derstand that they should not enter into these "fluctuating contracts; and, after that sacred "contract, they should feel it to be their mutual "interest to improve their tempers. If such a "contract as is contained in the second of these "instruments, an engagement under the hand of "the husband, that his wife and children shall be "free from all control by him, that she shall "dwell in his house, as long as she pleases, and "take herself away when she pleases, could not "be infused into a marriage settlement, (and it is "to be observed, that before marriage she has "more capacity to contract than afterwards,) how "can it be the subject of subsequent stipulation? "The consequence would be constant misery." He then observed that Lords Thurlow and Kenyon had doubted "whether covenants with such

" objects ought to be the foundation either of " action or specific performance. That doubt has " long had place in my mind. If this were *res* " *integra*, untouched by *dictum* or decision, I " would not have permitted such a covenant to be " the foundation of an action or a suit in this " Court. But, if *dicta* have followed *dicta*, or " decision has followed decision, to the extent of " settling the law, I cannot upon any doubt of " mine, as to what ought originally to have been " the decision, shake what is the settled law upon " the subject. It is better, that the case should " go to the House of Lords, than that the law " should remain in this state, upon a point con- " nected with the very well-being of society."

This case was eventually compromised; but in 1821, the question arose again before Lord Eldon, and he adverted to the strength of Sir S. Romilly's argument in the former case,* he had "asked if the " parties could say at the time of the marriage, that " they would agree to live separate—they could not " —and yet it is impossible to deny, that before the " marriage they may in general contract, but that " they cannot afterwards—and then will a con- " tract be supported in the latter case which could " not be supported in the former?" In another part of his judgment he said, "it has always ap- " peared to me very difficult to hold these deeds

* *Earl* v. *Countess of Westmeath*, Jacob's Reports, pp. 126, 142.

" legal. It seems to be admitted that a mere " agreement to live separate is one that would not " be deemed valid, and it seems strange, as Sir " W. Grant observes, that if the primary object " be vicious, these auxiliary provisions should be " held good, and thereby that which the law " objects to should be carried into effect." So another very high authority, Lord Chief Justice Abbott, in a case before the King's Bench, observed in 1824:*—" For a long series of years " all the Judges, when called upon to pronounce " judgment in such cases, have felt themselves " bound by former decisions, although each of " them in his turn has said that his opinion would " probably have been different had the question " been *res integra*."

Lastly, to complete the anomaly of the law, it is competent to either party so separated to bring at any time a suit for restitution of conjugal rights, and in which the Ecclesiastical Court most justly refuses to look at these deeds, lest it should become the instrument of carrying into effect these illegal separations.†

* *Gee* v. *Thurlow*, 2 Barnewall & Cresswell's Reports, p. 551.

† *Oliver* v. *Oliver*, 1 Consistory Reports, p. 270.

The cause of this anomaly is clearly stated by Mr. Roper in his well-known and learned treatise " On the Law of Pro- " perty arising from the relation of Husband and Wife." He says, " The root of the evil lies in the allowance of any separa- " tion of husband and wife, except under the authority of the " Ecclesiastical Court, which permits no divorce *à mensâ et thoro*, " except *propter sevitiam aut adulterium*; for whilst their sepa-

The anomalous character of this matter is, as has been said, the least evil attending it. The mischief which it causes to society, whose morality it cuts up by the roots, has been so forcibly expounded in the passages already cited, that I will no further dilate upon it; but I say, with a confidence warranted by the high authorities which I have quoted, that this is a part of the marriage law which cries aloud for reformation, and which, while suffered to continue as it is now, will counterbalance the good effects of any remedy accruing from a change in the law which regulates the divorce *à vinculo.*

To return to the question, from which these remarks have not, I trust, been an improper digression, as to the proper tribunal for adjudicating on this kind of divorce.

If it be clear, as I hope it is, from what has been stated, that the divorce *à mensâ et thoro* must be left, and made more effective by the declared illegality of voluntary separations, it should seem that the tribunal which administers the law upon the divorce from cohabitation should also adjudicate on the divorce from the bond itself. This was the recommendation of the "Reformatio Legum." By this arrangement the authority of

"ration *in pais* is allowed to continue, and the wife is to be "considered as a *feme sole* during her voluntary residence apart "from her husband, difficulties must occur in applying the same "rules of law to her, still clothed with the character of a wife, "as are applicable to single women."—Vol. ii. p. 270, Jacob's ed.

the Church over the dissolution of "the vow* and covenant betwixt them made" at her altar would still, through the medium of her Consistorial Courts, be preserved. This has been the opinion of many eminent persons. In Scotland the ordinary tribunal adjudicates on divorce. It seems to be in accordance with reason and good sense, inasmuch as the same law must be applied, the same kind of proof must be relied upon, whether the different shades of circumstances of each particular case entitle the injured party to the greater or the less redress.

"The proceedings in the Ecclesiastical Courts," said Bishop Horsley, in his triumphant and unanswered speech, "are as regular, and go with "as much certainty to serve the purposes of sub-"stantial justice as those in the temporal courts. "It is true they have, in those matters that are "subject to their cognizance, a system of law and "jurisprudence of their own, and their own forms "of proceeding; but their system is a wise, well-"digested system, founded on the general prin-"ciple of justice, and their forms are regular, well "known, and certain; and in the hands in which "the administration of that part of the law of the "country is at present placed, and has been placed "for a long time backward, no one will presume "to say that justice is not distributed with as "much ability and as much integrity in those

* See Prayer at the Consecration Service.

" courts as in any other court of law or equity in " Great Britain." *

The objections usually urged against such a tribunal seem to be :—

1. That the legislature now requires a verdict at at common law.
2. That the Ecclesiastical Court is liable to collusion.
3. That evidence is not taken *vivâ voce,* but as in the Courts of equity.
4. That the proceedings are too expensive.
5. That there is the delay and expense of an appeal.

I will endeavour to examine each of these objections in their order.

First, It is said the Legislature now requires a verdict at common law as well as the sentence of the Spiritual Court,—a verdict for what purpose ? to show there is no collusion ? Let us see whether it be good for this purpose, or whether it be notoriously the contrary. And, first, let it be observed, that the plaintiff and defendant before the jury are not the plaintiff and defendant before the tribunal of divorce. " Her Grace," as the Lord Chief Justice, in the passage already cited,† told the House of Lords, " was neither plaintiff " nor defendant." " A verdict,"‡ says Lord

* Debate in the Lords on the Adultery Prevention Bill, Parl. Hist. vol. xxxv. p. 285. † See p. 16.

‡ *Elwes* v. *Elwes,* 1 Consistory, p. 289, note.

Stowell, " is admitted to be pleaded in the pro-
" ceedings of the Ecclesiastical Court. It has
" been allowed for a considerable time, though I
" never distinctly understood on what principle
" it was originally introduced. It is often said
" that it is not direct proof, but merely a circum-
" stance ; yet that is surely somewhat inaccurate.
" If introduced as a circumstance, it can be only
" on the footing of a circumstance, though of
" a low kind, below what the law calls a *semi-*
" *probatio,* yet still of the nature of evidence or
" proof; but how can that be evidence against
" the party which has passed in a suit to which
" she was not privy ? It is said that it is intro-
" duced for the purpose of showing there has
" been no collusion. Collusion or no collusion
" with the alleged adulterer is a fact which cannot
" either way legally affect the wife who is neither
" party nor privy in the remotest degree to that
" litigation ; nor do I understand in what view
" such an action against another party can in any
" degree instruct the conscience of the Court
" upon that issue between husband and wife."

Unanswerable appears to me this reasoning. But we may go a step further, and ask whether inadmissible as a verdict is as evidence against the wife, does it prevent collusion between the husband and adulterer ? I will call unimpeachable witnesses to prove the reverse. Hear Lord Eldon :* " He deprecated the rejection of Lord

* Parl. Hist. vol. xxxv. p. 227

" Auckland's bill, because he was certain that " nine out of every ten cases of adultery that came " into the Courts below, or that Bar, were " founded on the most infamous collusion, and " that as the law stood it was a farce and a moc- " kery, most of the cases being previously settled " in some room in the city, and that *juries were* " *called to give exemplary damages, which damages* " *were never paid, or expected to be paid by the* " *injured husband.* It was equally a farce and a " mockery to bring them up to their Lordship's " bar, because the parties took care not to pro- " duce the piece of parchment that had been " executed between them, or to let the House " know one word of the matter." Hear, perhaps, the best of all authorities on this point,—Lord, then Mr. Erskine,*—who said, " That it never perhaps " had fallen to the lot of any man to have con- " ducted so many civil actions of this description." Then, commenting on the absurdity of considering adulteries as a mere civil, and not as also a criminal injury, he asked, " how was it possible for " a man of any principle or feeling to receive " money as a satisfaction from the man who had " possessed the woman he loved; so far from be- " ing a satisfaction, it could only remind him of " the irreparable loss he had sustained?" Then continuing his argument for a *criminal* prosecution, he said, " This course would also be more

* Parl. Hist. vol. xxxv. p. 311, 312.

" favourable to defendants, where there were " proper circumstances of mitigation, than the " civil remedy by action. Every lawyer knew " how difficult it was, by the cross-examination " of witnesses, to get at them, and the hazard of " giving adverse evidence, which gave the plain- " tiff's counsel the opportunity of influencing the " damages by a reply, when the sudden impulse " of the jury were in the moment to decide on the " damages." In the same debate, Lord Alvanley, then Sir Pepper Arden, Master of the Rolls, made these forcible remarks:* " The jury, from detes- " tation of the crime of the seducer, often gave " vindictive damages to the husband. This prac- " tice had the worst consequences, as the husband " might now sell his wife's honour for a piece of " money. There was no doubt that husbands " often connived at the misconduct of their wives, " from the hope of being enriched by the damages " they were likely to receive. Would any one " say that that was a good system which gave " rise to such enormities? Again, it very fre- " quently happened that the damages were not " exacted, and the adulterer escaped unpu- " nished."

I think it would be difficult to gainsay such authorities as these: men of great eminence in their profession, and long experience in the work-

* Parl. Hist. vol. xxxv. p. 319.

ing of the law, as well as fully capable of understanding its theory.

It is not, then, on account of the necessity of a verdict, that the tribunal which pronounces the lesser may not pronounce the greater divorce.

The Second objection is, that this Court is not exempt from the liability to collusion. To this I answer, every human Court is and must be liable to a certain extent to this evil; but this Court, which at all events has *both* parties before it, takes great precautions against collusion; it is bound by express law not to grant divorce on the confession of either party; it requires the party suing for the remedy to be free from all taint of a similar crime, and to have in no way, actively or passively, abetted or connived at the commission of the offence in his partner; and if no opposition be made by the party proceeded against, the vigilance of the Court is proportionably awakened to sift the evidence produced. But if more guards against collusion can be devised, let the Court be armed with them.

The Third objection is, that the witness is not examined *orally* in the Ecclesiastical Court. To this I answer, that if a *vivâ voce* examination has advantages, it undoubtedly has great disadvantages. Is there any body ignorant that many an upright witness, from hurry, confusion, trepidation, fright, shame, nervous constitution, is made, under the torture of cross-examination, to say very often the

reverse of what he means; does it not happen every day that, while the dishonest witness, being naturally also the most impudent, supports the bad cause, the honest witness unintentionally injures the good one: from these evils written depositions are free. The system of the Courts of civil law and equity has many positive advantages. False witnesses, well trained, leagued together and heartening each other to support one tale, may and (as is commonly the case in well concocted *alibis*) do adhere to it orally, under the sharpest cross-examination; but when each is examined separately, where no hint or suggestion of any kind can be conveyed to him, and every word is taken down in writing, it often happens that discrepancies, abstractedly trifling, but relatively of the utmost consequence, creep out, and truth, which would have never otherwise been elicited, is frequently so discovered. There is another advantage incident to our system of examination, which will be acknowledged wherever it is known, namely, that due notice is given to the adverse party of the names of the witnesses about to be produced against him, and of the parts of the plea, that is, the particular facts which they will appear to sustain. The adverse party has, therefore, ample opportunities of inquiring into the character of the witnesses, both generally and relatively to the particular case, who are to give evidence against him, and to shape his interrogatories according to the

information he has received. The knowledge of this, as may easily be conceived, is of powerful operation in deterring the production of corrupt and profligate witnesses. I believe that I am correct in saying, that in *civil* cases, at common law, this advantage does not exist at all, and not completely in those of a *criminal* nature. The practice of examining witnesses on different days is attended with much less expense in heavy cases, where 50 or 60 are examined, than the bringing them all together and providing them with lodging and food, in order that they may be ready for the trial on a particular day, which may after all be deferred till another occasion, when the same expense must be again incurred. It has also this beneficial consequence, that a witness, however corrupt and regardless of his oath not to disclose what he has deposed, cannot remember so accurately the whole of his depositions in chief, and on interrogatories, so as not to omit some little circumstance, which, besides, he thinks trifling, but by the comparison of which with the deposition of his fellow witness, the clue is often given to unravel a tissue of fraud. The very objection, which advocates so often make, that they are obliged to put interrogatories to adverse witnesses in the dark, and thereby often to injure their cause by drawing out an answer they little expected, is surely no objection to those who consider the discovery of the truth to be the object of judi-

cial proceeding; the trial may be less a game of skill between two advocates; but the conscience of the Court is the better instructed for these revelations, which the advocate complains of having elicited. And surely a decision given after a calm retrospect of all the minute circumstances of a case, which a judge, who has written depositions before him, may always command, is as favourable to justice as a judgment delivered immediately after the oral examination of witnesses, and the address of the advocate, by which Lord Erskine complained that damages were so often inflamed* when the jury were called upon for their verdict. Lastly, it is worth observing, that these are not the cases in which public morality is promoted by the oral examination of witnesses. But I am quite ready to admit that, occasionally, it may be very desirable to see and orally interrogate the witness, and especially that the Judge should have the power of doing so whenever a doubt crosses his mind. The present Ecclesiastical Courts Bill expressly confers this power on the present tribunal for divorce; and I humbly submit to every lawyer's calm consideration, whether such a system may not combine the advantages of *vivâ voce* evidence and written depositions, and may not exclude the evils of both.

Fourthly, a great deal has been said about the expense of obtaining a Divorce; and though it may

* Vide supra, p. 38.

be thought very inexpedient, in the present state of society in England, to make this remedy so easy for the deserving that the undeserving will never be deterred from attempting to obtain it,—though perhaps there are good reasons to be given why the cheapness of the experiment should not tempt persons to promote the crime by which they hope to gratify their wishes,—though Scotch Divorces for 10*l.* or 15*l.* a-piece would, I firmly believe, be anything but a boon to this country, —yet the present expense of a divorce *à vinculo* is, I am quite ready to admit, an indefensible and grievous evil. But can that objection of expense be fairly urged against the Ecclesiastical tribunal?

The following is, I believe, the average expense of an unopposed Divorce Bill.

	£	£
Divorce *à mensâ et thoro* at Doctors' Commons.		
Expense, *both sides*, at the utmost ..	..	200
Action at Law.		
Solicitor's Bill	250	
Witnesses.....	100	
	——	350
Houses of Parliament.		
Fees of the House	200	
Solicitor's Bill	150	
Witnesses	100	
	——	450
		£1000

It is of course impossible to give a fair average of the expense of a contested suit; it must depend upon a great variety of circumstances, but I believe the same *ratio* would be found to exist.

Then it has been said the husband is compelled to give alimony to his wife, and that she may be supporting her paramour during the pendency of the suit out of the funds of her husband. It may so happen; but the alimony, the allotment of which, it must be remembered, is according to the discretion of the Judge, exercised upon the circumstance of each case, ceases when the sentence of divorce is pronounced. I need hardly say that the wife is not to be presumed guilty before she is legally proved to be so; and if the law of the land gives all her fortune to the husband, surely it is only just that he should be compelled to allow her the means of defending herself from a charge by which he is to deprive her of the means of subsistence, and to affix lasting infamy upon her character. That an abandoned woman may abuse such a right seems to be no reason why an innocent woman should be deprived of it.

Fifthly, it is objected that there is the expense of an appeal. Would it be decent that the law of the land should allow its subjects to appeal on a matter of 20*l.* from the Court of Queen's Bench to the Exchequer Chamber, and from the Exchequer Chamber to the House of Lords, and deny to them the right of appeal in a matter where the dearest and nearest interests of existence are at stake? But it may be fairly urged, that one Court of Appeal is sufficient for the purposes of justice, and no doubt, speaking generally, it is so. It would be,

for obvious reasons, inexpedient to allow Diocesan Courts the power of divorcing *à vinculo*, and there is no necessity that they should have such power; because the present Ecclesiastical Courts Bill provides that either the party proceeded against or the party impugned may take the suit, or the judge may send it, in the first instance, before the superior tribunal. But if such causes were confined to the Courts in London, with an appeal to the Judicial Committee of the Privy Council, composed of those versed in the theory and *practice* of the common, equity, and civil and canon law, as it ought to be for the purpose of doing justice to the various and multiform interests submitted to its decisions,—if this were done, why should not this most important matter meet with a due and full investigation, and a calm, wise and dignified adjudication.

Another mode might be, that the party who had obtained a divorce *à mensâ et thoro*, in the Court below should be permitted to take out a citation from the Court of the Judicial Committee of the Privy Council against the guilty party, to show cause why the divorce *à mensâ et thoro* should not be extended into one *à vinculo* by the superior tribunal. Either of these courses would have these great advantages over the present system—a suit before a proper judicial tribunal—and a considerable diminution of expense. It has been thought that a reference to Parlia-

ment would still be necessary, to enable the innocent party to marry again; but surely the act of the legislature, which enables the tribunal to pronounce the divorce *à vinculo*, might also invest it with the power of accompanying the sentence with such a permission.

Whatever remedy it may seem good to the wisdom of Parliament to provide, I fervently hope it will not allow the present session to pass away with the law of Parliamentary Divorce unaltered —that it will abdicate functions which it never ought to have assumed, and which, by the concurrent suffrages of its most illustrious members, it is incompetent duly to discharge—that it will wipe away a blot from the administration of justice in England, which all her eminent statesmen and lawyers have lamented, and which every intelligent foreigner has been astonished should so long have been permitted to defile her scutcheon.

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